

Honorable Larry Pressler
November 8, 1995
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Imagine this, a demand for \$18 million "as an inducement to consummate the negotiation" and a total digital rebuild of the entire microwave system when only one link interferes with the PCS licensee's frequencies. This is the incomprehensible demand made by the Suffolk County (New York) Police Department. Clearly, the ability to provide additional wireless competition for Suffolk County is going to be thwarted by this unseemly and irresponsible abuse of a license to use the public's spectrum. Keller & Heckman contends that it is a "lie" that microwave incumbents have no incentive to negotiate.² We submit that the enclosed examples are examples of a de facto unwillingness to negotiate. While, indeed, many responsible microwave incumbents do appear to be willing to negotiate, other incumbents, encouraged by Keller & Heckman and others, are attempting to exploit this process to reap unconscionable premiums for themselves and their consultants.

Keller & Heckman also asserts that it is a "lie" that abusive tactics by microwave incumbents stand in the way of rapid PCS deployment, because the FCC has encouraged PCS licensees to present attractive offers to incumbents.³ Although the FCC did contemplate that PCS licensees may offer inducements to relocate, opportunity for inducement has become an opportunity for extortion by microwave incumbents. during the voluntary period, this has been abused by certain microwave incumbents.

Keller & Heckman also holds itself and its clients blameless because, it claims, PCS deployment is not imminent. I submit that there is a bit of a chicken-and-egg problem with that conclusion. The longer incumbents hold out for excessive and unreasonable premiums, the more PCS licensees are slowed in their ability to offer service.

CTIA is not alone in its concern over the demands being made by some incumbents and the impact those tactics are having on the relocation process. The FCC has gone as far as it can by issuing a Notice of Proposed Rulemaking which, in addition to proposing rules for the sharing of relocation costs among PCS licensees, also proposes to clarify the existing relocation rules.⁴ This *Notice* was necessary because of the very problems which Keller & Heckman deny. Because the FCC's authority in this area is limited, only the Congress can get at the root of the problem.

Senator, the enclosed are only examples. While most companies are fearful of retribution from the incumbent licensee (i.e., further refusals to negotiate and/or an

² Id., Attachment at 2.

³ October 5 Letter, Attachment at 3.

⁴ Notice of Proposed Rulemaking in WT Docket No. 95-157, RM-8643, released October 13, 1995 (NPRM).

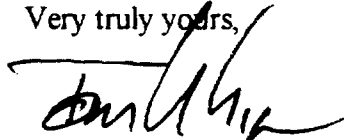
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increase in compensation demands), the enclosed public example, as well as the anonymous examples, are far from unique. There is a very simple truth in this matter -- many microwave licensees are perverting the public trust by delaying the implementation of PCS for their own gain. The members of CTIA are attempting to follow the mandate of Congress to expand competitive wireless telecommunications. The Keller & Heckman law firm is attempting to seize upon the transition by charging large [in one reported instance, \$250,000] fees (to be ultimately paid by the PCS company) to tell microwave incumbents how to slow down the PCS transition in order to maximize their opportunity for extortion.

The facts speak for themselves. The "big lie" paper is just that.

For these reasons, CTIA urges you in your position as Chairman of the Committee on Commerce, Science and Transportation to adopt as part of an appropriate piece of legislation the language contained in the Hall Amendment to the House Reconciliation legislation. That action would equalize the bargaining power between microwave incumbents and PCS licensees and avoid unnecessary and undesirable delay in the creation of new competition in the wireless telecommunications marketplace.

Very truly yours,



Thomas E. Wheeler

cc: American Gas Association
American Water Works Association
Interstate Natural Gas Association of America
UTC - The Telecommunications Association
Senator Earnest Hollings, Ranking Minority Member
Members, Senate Committee on Commerce, Science and Transportation
The Honorable Reed E. Hundt, Chairman, FCC
The Honorable Anne Bingaman, Assistant Attorney General, Antitrust Division
The Honorable Alice M Rivlin, Director, OMB
The Honorable James H. Quello, Commissioner, FCC
The Honorable Andrew C. Barrett, Commissioner, FCC
The Honorable Susan Ness, Commissioner, FCC
The Honorable Rachelle B. Chong, Commissioner, FCC
Ms. Regina M. Keeney, Chief, Common Carrier Bureau, FCC
Ms. Michele C. Farquhar, Chief, Wireless Telecommunications Bureau, FCC

Summary of Microwave Relocation "Bloody Shirts"

Many PCS licensees have been reluctant to identify 2 GHz microwave incumbents that are abusing the public trust of their licenses by making unconscionable demands as a precondition to the relocation of their facilities. This reluctance on the part of PCS licensees is due to a fear of retribution. In many cases the incumbent microwave licensee is also a governmental entity from which PCS licensees must seek important zoning and other permits essential to their businesses. In other cases, the incumbent will obtain revenge simply by further delaying any resolution. With one exception (see the first example), the following list of instances of misconduct by microwave incumbents invokes a "ski mask", that is, it shields the identities of the parties involved as a way to protect PCS licensees from retribution. This "masking" was applied by an accounting firm that collected the examples of incumbent wrongdoing. By way of background, of the 19 incumbents, 7 are government entities, 3 are publicly-traded corporations, 4 are public utilities, 4 are public safety organizations and 1 is unknown.

- Incumbent, Suffolk County Police Department, Suffolk County, New York, states that it is in possession of 21 paths. According to Columbia Spectrum Management (CSM), the Incumbent is in possession of 13 paths, six or seven of which exist in the PCS spectrum. The PCS licensee has found only one path that affects its frequencies. The Incumbent, however, wants its entire system relocated with a digital upgrade and has demanded "\$18 million dollars to consummate the negotiation in a timely manner." CSM indicated that it has received the Incumbent's address information for mailing the check. See attached facsimile.
- Incumbent has a twenty-link network and the two PCS licensees have identified nine links with co-channel interference. The Incumbent has requested that its entire network be upgraded from existing analog to digital, including the required new digital channel multiplexers and a new simulcast system that would be integrated into the new all digital network. The Incumbent also stated that it is looking at a four-year process to complete the network upgrade. A preliminary estimate to upgrade their system is around \$17 million. The actual cost to relocate only the potentially interfering links is approximately \$1.5 million for an analog solution.
- Incumbent wants a cash buyout of 34 analog links and one digital link. The Incumbent wants compensation for 5 links that were relocated in 1993 and for 4 links that will not interfere, but are part of its network. This Incumbent initially valued its links at \$1,200,000 per link if relocated by 12/31/95 and \$1,000,000 per link if relocated by 3/31/96. In a subsequent meeting, the Incumbent reduced the cost per link to \$347,000 (within this cost per link are two very questionable elements: \$55,000 per link for overload costs and \$60,000 per link for undepreciated book value). At the Incumbent's rate, the total cost to buyout 35 links is \$12,145,000. The Incumbent's request will require the PCS licensee to pay a premium of \$6.9 million (assuming relocation of 38 links at \$347,000 per link). The PCS licensee will interfere with only 29 links and estimates a cost of \$5,200,000 (\$179,300/link) to relocate these 29 links.

- Incumbent has 14 links (1 digital and 13 analog) that the PCS licensee will need to relocate. The Incumbent's total system is comprised of 20 links. The PCS licensee estimates the cost to relocate the 14 links on a comparable basis at \$2,800,000 (\$200,000 per link). The Incumbent wants an upgrade of all 20 links to digital at no cost to the Incumbent and to resolve any technical issues associated with its simulcast as well as absorb all cost required to modify their simulcast network. The Incumbent's analysis indicates a cost of at least \$10 million to relocate and upgrade the 20 links, not including any simulcast costs. The Incumbent's request will require the PCS licensee to pay a premium of over \$7 million.
- Incumbent has 4 analog links that will interfere with the PCS licensee's system. The PCS licensee estimates the cost to relocate the 4 links on a comparable basis at \$760,000 (\$190,000 per link). The Incumbent, after retaining a consulting firm to represent them in any negotiations, wants a cash buyout of its facilities and will coordinate relocation. At the first meeting with the Incumbent and its agent, the PCS licensee made an offer of \$800,000 to relocate the 4 links. The Incumbent representative rejected the offer because he did not consider it a "bonafide offer." Neither the agent nor the Incumbent would divulge the amount of money required to relocate their links. At the second meeting, the PCS licensee again requested from the Incumbent the amount of money that it was demanding for its 4 links. The Incumbent indicated that it was not prepared to respond at that time. In a subsequent telephone conversation, the Incumbent's agent indicated that the Incumbent required \$4-5 million compensation and that the Incumbent wants the PCS licensee to pay all consultant costs (\$250,000). The Incumbent's request would require the PCS licensee to pay a premium of \$3-4 million.
- Incumbent claims to have 8 links working, but the PCS licensee discovered that 4 links are not in service. The PCS licensee estimates the cost to relocate to comparable facilities at \$1,500,000 for 8 links (\$187,500 per link) and \$750,000 for 4 links. The Incumbent wants a cash buyout and will coordinate its own relocation. Initially, the Incumbent was unwilling to meet with the PCS licensee. After numerous calls and a letter, the Incumbent finally agreed to meet. The Incumbent indicated that its 8 links were worth between \$400,000-\$600,000 per link and refused to accept a lower offer. Assuming a price of \$500,000 per link, the cost to relocate the Incumbent's 8 links would be \$4,000,000. The Incumbent would also require the PCS licensee to pay a premium of \$3,250,000.
- Incumbent is asking for cash. They want \$1 million per link. The analog replacement to the conflicting links is estimated at \$200,000 per link.
- The Incumbent, a public utility cooperative, has a system comprised of 78 paths of which 25 are 2 GHz and 25 are 6 GHz. The PCS licensee offered to relocate 2 of the 25 paths in the 2 GHz band for relocation. The Incumbent has indicated that it wants to coordinate relocation of all 78 paths, changing complete routes rather than one path at a time as well as an upgrade of all paths to digital. The Incumbent expects the PCS licensee to pay for its entire system relocation and the upgrade. The Incumbent has indicated that it wants to negotiate relocation and upgrade to digital of all paths prior to proceeding any further and will not allow site

surveys until negotiations have begun. If negotiations are not satisfactory, the Incumbent will turn negotiations over to UTC.

- Incumbent has 14 links (11 digital, 3 analog) that the PCS system will interfere with. The Incumbent's total system is comprised of 23 links. The PCS licensee estimates the cost to relocate the 14 links on a comparable basis at \$2,800,000 (\$200,000 per link). The Incumbent wants its entire network (all 23 links) upgraded to digital at no cost to the Incumbent and wants the PCS licensee to pay for outside consultant costs to evaluate the PCS licensee's offer. The Incumbent estimates the cost to upgrade their entire system at \$4,600,000 and will require the PCS licensee to pay a premium of \$1.8 million.
- Incumbent has requested that the three PCS licensees operating in their spectrum buy their entire twenty-seven link network, even though there are only fourteen links which have the potential for co-channel interference. The amount of compensation they seek is to be the cost to entirely replace and upgrade this system to digital plus an undetermined "incentive multiplier".
- The Incumbent, a municipality, has a system comprised of 12 paths, seven of which are in the 2 GHz band. The PCS licensee has offered to relocate services for two of these paths. This Incumbent's system is used for public safety and city administrative communications. It carries traffic to three remote radio sites. It plans to simulcast and upgrade to digital. The Incumbent has dark fiber already in place, which may be part of their upgrade. The Incumbent is also talking to other Incumbents to see what they are doing and has indicated that it will drag out negotiations for the full time allocated unless it gets what it wants. The Incumbent has also indicated that it will probably hire consultants to represent them in negotiations. The Incumbent is looking for complete replacement of its existing system with hybrid radio-fiber digital system while maintaining system integrity. The Incumbent will try to get the PCS licensees to pay for the entire upgrade and is very aware of the PCS auction and "their rights" as defined by the FCC.
- The PCS licensee has submitted a contract for the relocation of eleven of the Incumbent's twelve 2 GHz paths using 6 GHz analog radios (the last path is a path that another PCS licensee is interested in). The Incumbent, a municipality, is unwilling to accept this like for like offer. The Incumbent stated that it views the PCS relocation issue as a substantial opportunity for receiving a digital upgrade at the expense of the PCS licensees. The Incumbent also stated that it had nothing to lose by holding out up to the full 5 year period for a complete systemic digital upgrade. The Incumbent stated that it did not have a particular vendor preference, but that it is seeking at least a DS-3 capacity replacement system. The Incumbent added that it was broke and would not be able to offer any money towards the purchase of the proposed digital system. The Incumbent stated that it felt that the PCS licensee would ultimately offer it a digital replacement system, because of the timeline and the Incumbent's willingness to hold out for five years. The Incumbent stated that it preferred to have a single relocation, but does not mind having separate relocation agreements with the two PCS licensees involved.

- At the initial meeting between the Incumbent, a public utility company, and the PCS licensee, the PCS licensee said that it was interested in 4 paths (a request for a 5th path has been added since this meeting). The Incumbent stated that it was willing to negotiate for the relocation of the affected paths. The Incumbent stated that it would accept a cash payment to migrate two of the paths onto its fiber system. For the remaining two paths, the Incumbent expects to receive compensation equal to the cost of a digital upgrade. It also expects compensation for any additional paths impacted by the digital upgrade. The PCS licensee would have the choice of migrating the additionally affected paths to digital, or pay for the additional back-to-back channel banks needed for the digital to analog transition. The Incumbent stated that it would receive "comparable" compensation from the PCS licensee at the end of the 3 year negotiating period and therefore it "deserved" a premium for the early relocation of their system. The Incumbent also stated that it would not consider analog replacement because it has a long term plan to eventually migrate to digital and added that it currently had no money budgeted to pay the difference between an analog and digital replacement system. The Incumbent stated that it was particularly concerned with potential downtime, and that it would insist on a hot cutover. It also stated a preference to replace the current radios with SONET digital radios. The Incumbent stated that it could meet the PCS licensee's timeline if the price was right.
- The Incumbent is a public safety entity and is well aware of the leverage that the position affords them. Currently, it has a 600 channel analog system which is operating at two-thirds of its capacity. If the PCS licensee does not provide it with a DS3, 6 GHz replacement system, the Incumbent is prepared to wait for the full time frame its public safety classification affords them. A sixteen T-1 digital replacement system, a considerable upgrade, would be about one-half the cost of the requested DS3 system.
- Negotiations have been ongoing since April. The Incumbent has the second largest network that is fully contained in the PCS licensee's market and will need to be relocated. The Incumbent initially wanted a SONET replacement system, well beyond what could be considered a comparable replacement. In the most recent negotiation, the Incumbent included in its requirements that the PCS licensee also relocate its 6 GHz analog links. In addition, the Incumbent has not allowed site surveys and due diligence review of its network. Without the surveys and review, the PCS licensee cannot accurately assess comparable replacement.
- The Incumbent is not a public safety entity, but it has the largest network that the PCS licensee must relocate. The Incumbent is requesting that if the PCS licensee wants to relocate faster than within three years, the PCS licensee will have to pay for aerial fiber. The Incumbent has retained two UTC consultants.
- The Incumbent's system is a large multi-link, multi-MTA system in the PCS band with additional links in the 2.1 GHz band. Ten of its "PCS band" links are in the PCS licensee's market, only one of which is co-channel to the PCS licensee. The Incumbent's strategy is that the more links a PCS licensee is willing to relocate, the better the per link cost. It is also seeking reimbursement for links in the 2.1 GHz band. The Incumbent stated that if a PCS

licensee wants it to relocate prior to the three-year FCC stated time frame, a premium would be required.

- The Incumbent, a commercial enterprise, has a system that is comprised of 159 paths (Incumbent says there are less than half that number). Twenty-seven of these paths are analog 2 GHz. The PCS licensee has identified two paths of interest (other PCS licensees have identified a total of 11 paths of interest although these were not yet disclosed). The Incumbent is only interested in a systemic relocation and indicated that if the offer was nothing more than a comparable replacement, then the next negotiation meeting would be a very short one. Once a contract is signed, the Incumbent said that it could migrate the system within 90-180 days. In exchange for their early relocation, the Incumbent wants a cash incentive to move, otherwise it will hold out until the involuntary relocation period. The Incumbent would not articulate the amount of compensation it was looking for, but said it would be willing to entertain offers of resources other than cash if that was of interest to the PCS licensees. The PCS licensee raised a concern of the Incumbent's inability to relocate 27 paths to microwave facilities in such a short timeline. The Incumbent did indicate that on some paths it would be looking for microwave, but that many paths would utilize other facilities. It is the PCS licensee's feeling that the Incumbent is most likely looking to get out of microwave. Several years ago, the Incumbent put the system up for sale. When it realized that there was money to be made through microwave relocation, it took the system off the market. Once the Incumbent sells the frequencies, it will most likely sell the sites and equipment. The Incumbent is interested in other sources of ongoing revenue and very open to discussing co-location with any PCS licensee.
- Incumbent is seeking compensation of \$500,000 for two links located in the 2 GHz frequency, but not carrying any traffic. Since the links are idle, there is no potential interference and the FCC should cancel the license. No compensation should be demanded where there is no true "incumbent".
- One PCS licensee is negotiating with 14 incumbents, having 102 microwave links. Although only four of the incumbents are being difficult, they have 65 links, accounting for almost two-thirds of the links that need to be relocated.



**SUFFOLK COUNTY
POLICE
DEPARTMENT**



TECHNICAL SERVICES SECTION

TELEFAX COVER SHEET

THE MESSAGE CONSISTS OF 0 SHEETS FOLLOWING THIS COVER.

SHOULD ANY PORTION OF THIS MESSAGE BE RECEIVED POORLY
CONTACT THE SENDER BY VOICE AT (516) 852-6434

DIRECTED TO: Ms. Kathryn Drucker


FROM: D/I Gregory Curto

**RETURN TELEFAX AUTOMATIC ANSWER PHONE
(516) 852-6418**

Ms. Drucker,

In exchange for the 2 GHz frequencies, Suffolk County requests a total digital microwave upgrade which includes all enhancements with all County Management Information Services requirements as indicated in the information FEDX'd to you on Thursday, Oct. 5 '95. An additional revenue of \$18 million must be included as an inducement to consummate this negotiation in a timely manner.

Sincerely,


D/Insp. Gregory Curto